

AMENDED IN SENATE MAY 29, 1997

AMENDED IN SENATE MAY 19, 1997

AMENDED IN SENATE MAY 8, 1997

AMENDED IN SENATE APRIL 28, 1997

SENATE BILL

No. 641

Introduced by Senator Polanco

February 25, 1997

An act to amend Section 1270.1 of the Penal Code, relating to bail, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 641, as amended, Polanco. Pretrial release: failure to appear.

Existing law requires that a hearing be held before any person who is arrested for a violent felony or certain other offenses involving spousal rape, domestic violence, or harassing and threatening another person is released on bail in an amount that is more or less than the amount contained in the schedule of bail for the offense, or on his or her own recognizance.

This bill would add persons who are arrested for and charged with serious felonies *other than residential burglaries*, to whom that provision applies. The bill would establish the burden on the prosecution to present evidence regarding release of the person detained, as specified, and would require the court to appoint defense counsel for the

hearing. By imposing increased duties on local criminal justice systems that are equivalent to those imposed by the establishment of a new crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1270.1 of the Penal Code is
2 amended to read:

3 1270.1. (a) Before any person who is arrested for and
4 charged with any of the following crimes may be released
5 on bail in an amount that is either more or less than the
6 amount contained in the schedule of bail for the offense,
7 or may be released on his or her own recognizance, a
8 hearing shall be held in open court before the magistrate
9 or judge:

10 (1) A serious felony, as defined in subdivision (c) of
11 Section 1192.7, or a violent felony, as defined in
12 subdivision (c) of Section 667.5, *but not including a*
13 *violation of subdivision (a) of Section 460 (residential*
14 *burglary).*

15 (2) A violation of Section 262, 273.5, or 646.9.

16 (3) A violation of paragraph (1) of subdivision (e) of
17 Section 243.

18 (b) The prosecuting attorney and defense attorney
19 shall be given a two court-day written notice and an
20 opportunity to be heard on the matter. If the detained
21 person does not have counsel, the court shall appoint
22 counsel for purposes of this section only. The hearing

1 required by this section shall be held within the time
2 period prescribed in Section 825.

3 (c) At the hearing, it shall be the prosecuting
4 attorney's burden to present evidence of past court
5 appearances of the detained person, to indicate the
6 potential sentence that could be imposed, and to present
7 evidence regarding the danger that may be posed to
8 other persons if the detained person is released. In
9 making the determination whether to release the
10 detained person on his or her own recognizance, the
11 court shall consider the potential danger to other persons,
12 including threats that have been made by the detained
13 person and any past acts of violence. The court shall also
14 consider any evidence offered by the detained person
15 regarding his or her ties to the community and his or her
16 ability to post bond.

17 (d) If the judge or magistrate sets the bail in an amount
18 that is either more or less than the amount contained in
19 the schedule of bail for the offense, the judge or
20 magistrate shall state the reasons for that decision and
21 shall address the issue of threats made against the victim
22 or witness, if they were made, in the record. This
23 statement shall be included in the record.

24 SEC. 2. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government
35 Code, unless otherwise specified, the provisions of this act
36 shall become operative on the same date that the act
37 takes effect pursuant to the California Constitution.

38 SEC. 3. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or
40 safety within the meaning of Article IV of the

1 Constitution and shall go into immediate effect. The facts
2 constituting the necessity are:
3 In order to reduce the number of defendants who fail
4 to appear for hearings or trial, it is necessary that this act
5 take effect immediately.

O

